United States Court of Appeals

for the Second Circuit

RESPONDENT'S BRIEF

ORIGINAL WITH PROOF OF SERVICE

76-4050

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

AMERICAN MAP COMPANY, INC.,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

RESPONDENT'S BRIEF

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UNITED STATES COURT OF APPEALS
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NATIONAL LABOR RELATIONS BOARD :

Petitioner, :

v. Case No.

AMERICAN MAP COMPANY, INC. : 76-4050

Respondent. :

RESPONDENT'S BRIEF

STATEMENT OF THE ISSUES PRESENTED

1. Can the Board prevent an employer from laying off a casual, temporary employee for economic reasons because that employee happens to be involved in a union organizing drive?

2. Can the Board compel an employer to overstaff his department and give preferential treatment to an employee who happens to be involved in a union organizing drive?

3. Were the violations found in the instant case of such a serious nature to support the extreme remedy of a bargaining order?

4. Does the record support the violations found?

5. May the Board issue a bargaining order based on 10 union authorization cards, which were solicited by a supervisor?

6. May the Board consider violations not alleged in the Regional Director's complaint?

7. Was the strike an unfair labor practice strike even though the union never informed the employer of its alleged purpose, and in fact, expressly stated that the strike was only for recognition?

8. Can a bargaining order be issued in a case where a valid demand for recognition was never made in an appropriate unit and the complaint contained no allegation of majority status at a time when a valid bargaining unit was sought.

STATEMENT OF THE CASE

This case is before the Court upon the application of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., 151 et seq.) enforcement of its order (A 55-62) issued against the respondent (herein the "employer") on August 18, 1975. This Court has jurisdiction over the proceedings as respondent's only offices are located in New York, New York.

FACTUAL BACKGROUND

A. Union Never Demanded Recognition In A Proper Unit

On May 2, 1974, Local 851, Retail Wholesale and Department Store Union, AFL-CIO, sent a letter to the employer demanding recognition. On the same day it filed a petition, 2-RC-16506, for a unit consisting only of shipping, receiving and map mounting employees (A 92). This petition was subsequently withdrawn and on May 8, 1974, a new petition, 2-RC-16513, was filed by Culinary Workers Union of New York, Local 923, R.D.W.S.U., AFL-CIO. The union later changed its name to Local 923, Retail, Wholesale and Department Store Union, AFL-CIO. This time, the unit sought included all shipping, receiving, packers, map mounting and plant clerical employees (A 93). A demand telegram was sent to the employer on May 9, 1974 (A 139). The employer informed the union in writing that it did not believe the union represented a majority of employees, and that the unit it sought was improper for bargaining purposes. Thereafter, on May 29 and June 3, 1974, a representation hearing was duly held. The Regional Director, on June 28, 1974, ruled that the unit sought by the union was

inappropriate since it excluded drafting employees and an additional six employees were added to the unit (A 100, 101-103). The union had sought a unit consisting of only eleven employees.

B. All Cards Signed at May 7, 1974 Union Meeting Are Invalid

To support the union's claimed majority, the Board relies on ten authorization cards, all signed at a union meeting on May 7, 1974. Michael Glavina , a supervisor was present at that meeting, spoke in favor of the union and actually signed a card. The respondent contends that all of these cards are invalid. (A 209, 211, 226, 255, 266, 276).

C. Michael Scibelli Was Laid Off When the Employee He Replaced Returned From the Hospital

On May 17, 1974, Michael Scibelli, a temporary employee, who had been hired to fill in for Vance Davis, a hospitalized employee, was laid off. At that time, Davis, who had undergone a hernia operation, had returned to work and was able to fully perform his job. May was also a disasterously slow month for the company. Thus, the retention of Scibelli, an extra man, could not be justified economically. Scibelli, besides being a temporary and casual employee, was also the least senior em-

ployee in the shipping department (A 218). Because of the severe economic slow down, Stephanie Green, also a temporary employee with the least seniority in the office, was also laid off. (A 330-336, 352-355).

It should be noted that in laying off the temporarily employed Scibelli, the respondend did not reduce the normal working complement of the shipping department, but merely brought it back to six employees, the same number of employees it had had since December, 1973. Sometime in November, 1973, the number of employees in the shipping department was reduced from seven to six employees. The shipping complement remained at six in December, 1973 and January, 1974 (A 171). In January it was learned that Vance Davis needed a hernia operation. Mike Glavina, at that time the shipping department foreman, suggested to Joseph Scali, the controller, that Scibelli be hired to fill in for Davis, while he was in the hospital. Scibelli, who is a college student (A 207) and who had been employed twice before on a casual, temporary basis (208), was hired for that purpose - to temporarily fill in for Davis. Thus, Scibelli started to work January 23, 1974 and Davis temporarily left for the purpose of entering the hospital January 25, 1974 (A 171, 219, 277, 330-331).

Davis remained away from his job the entire months of February and March at which time the shipping department continued to operate with six employees. Davis returned to work toward the end of April in an understandably weakened condition. Scibelli was kept on because of this, until May 17, 1974, at which time he was laid off, bringing the number of shipping department employees to six, the normal complement (A 219, 220).

However, even a substantial reduction of personnel could be justified by the company's drop in business in May (A 171, 275, 277, 354, 355).

D. Union Strike Was For Recognition

On May 28, 1974, almost two weeks after Scibelli's layoff, some of the employees in the appropriate unit struck. The Board concluded that the strike was for the purpose of protesting the layoff in spite of the following undisputed facts:

1) The Picket signs carried the following legend: "Please do not patronize American Map Company, Inc, 1926 Broadway. Non-Union, Refuses to bargain. Local 923, AFL-CIO, R.W.D.S.U., 130 West 42nd Street Ch 40848." (A 156, 181, 182) emphasis supplied.

2) No demand was ever made on the employer to reinstate Scibelli (A 227, 339).

3) Sidney Grund, the chief union organizer, agreed to end the strike and give the employer a "sweet deal" if the employer recognized the union. He never mentioned reinstating Scibelli (A 338, 339).

E. Ambrose, a Marginal Employee, Had Been Replaced

On June 4, 1974, the striking employees asked for their jobs back. However, they had been replaced (A 187). The Board accepts the fact that the strikers had been replaced except that it found on May 31, 1974, Nicholas Ambrose, one of the strikers offered to return to work and was refused because of his participation in the strike. As to this, the record clearly shows:

1) Nicholas Ambrose is a mentally handicapped employee. (A 292-303, 308-311, 314-315, 374-375, 379, 395, 396, 401-406).

2) He performs a single function for the employer. This function was being performed by strike replacements when he asked for his job back. (A 361-366, 395, 402)

3) Ambrose was later reinstated as were seven of the striking employees (A 187).

4) Of the seven reinstated employees, all engaged in picketing and three testified for the union at the representation hearing. Ambrose did not so testify (A 94-99).

5) It is accepted that he was not an organizing leader (A 16).

F. The Regional Director's Complaint Is Insufficient

Paragraph 6 of the Regional Director's complaint (A 74), sets forth the unit the Regional Director found to be appropriate on June 28, 1974. (A 73) However, the unit demanded by the union on May 9, 1974, as per the allegation in Paragraph 9 (A 74) and the unit referred to in Paragraph 7 (A 73), specifically did not include "drafting" employees. This allegation is thus incorrect and misleading. After a representation hearing duly held, the Regional Director found the unit petitioned for by the union on May 8, 1974 and demanded on May 9, 1974, to be inappropriate since it did not include "drafting" employees. The complaint contained no allegations of majority status based on the employees strike May 28,

1974. Indeed, Paragraph 12 of the complaint does not even allege that a majority of employees took part in said strike. (A 75)

Paragraph 10 basically alleged 8(a) (1) violations occurring on May 6, 8, 10, 15 and 16.(A 74) However, at the hearing, the General Counsel offered proof and the Board was able to find only one violation in the time alleged; an alleged address by Leroy Brown, a low-ranking supervisor on May 16, 1974 to five employees. (A 31) This appears to be an instant replay of an alleged identical conversation between Brown and the same 5 employees on May 3, 1974, (A 30) an incident not alleged in the complaint even if credited.

The other violations found by the Board all involved Nicholas Ambrose, a confessed poison pen letter writer and thoroughly discredited witness. Furthermore, they were all outside of the period alleged. (A 30) The Board found violations based on two alleged conversations between Ambrose and Scali and Ambrose and Robert Weeks. Ambrose placed both these conversations in the middle of April. (A 295, 298) Nevertheless, the Board, relying evidently on divine inspiration (certainly not on record testimony) placed these conversations in late April or early May (A 14) - at any rate, not in the period alleged.

The Board also found a violation in an alleged conversation between Brown and Sylvia Green on May 16, 1974. (A 30-31) However, even if her entire conversation is credited, there can be no 8 (a) (1) violations because as an office clerical worker Green was not a member of the unit found to be appropriate (A 108) and there is absolutely no testimony that her alleged conversation was ever conveyed to members of the unit. (A 235-241)

Thus, the complaint as it stands is insufficient to include violations in "late April or early May" or May 3. Furthermore, the General Counsel's motion to conform the pleadings to the proof was denied by the Board. (A 431-432)

APPENDIX SUPPLEMENT

The following documents were designated but not printed and will be added to this brief as supplements to the Appendix:

1) Ambrose' letter (Exhibit A)
2) Green's (Sims) employment application (Exhibit B)
3) Green's time card for week of May 10th (Exhibit C)

4) The N.L.R.B. letter postponing the election was not designated but should have been and will be added as Exhibit D.

ARGUMENT

I

THE LAYOFF OF SCIBELLI, A TEMPORARY REPLACEMENT FOR A HOSPITALIZED EMPLOYEE, WAS JUSTIFIED EVEN WITHOUT ECONOMIC RECESSION. THE MAY DROP IN VOLUME WOULD, IN FACT, JUSTIFY A FURTHER REDUCTION.

The issue before the Court is a simple one. Can a temporary, casual, employee qualify himself for preferential treatment and make himself invulnerable to economic realities by passing out union cards. Both logic and precedent say no. The Board has ruled that he can.

In considering the Board's surprising and totally unsupportable conclusion it is respectfully submitted that the Court examine five factors: 1) the nature of Scibelli's employment, 2) the normal complement of employees in the shipping department during the six month period prior to Scibelli's layoff, 3) the economic condition of the employer at the time of the layoff, 4) the testimony of Union's own witnesses, and 5) Court and Board precedent.

1. The Nature of Scibelli's Employment.

The following facts are undisputed:

Scibelli is a college student about a year away from his degree (A 207-208). He had worked for the company twice before as a temporary employee, the last time for two months in 1972 (A 207-208). In January, 1974, he was hired for the sole and express purpose of temporarily replacing a full time, permanent employee who was entering the hospital for a hernia operation. (A 277, 330-331) When that employee returned to work, Scibelli became expendable. Scibelli was temporarily retained until the returning employee, who had undergone surgery for a hernia, could, in the opinion of the employer, perform his job. At that time the purpose for Scibelli's temporary employment ceased to exist and he was laid off (A 220).

That, without more, incontroveribly supports the layoff of Scibelli. The Board does not have the authority to compel an employer to retain a temporary employee when there is no longer a need for his services - even if that employee is instrumental in a union organizing drive.

The Board tries to establish a need for Scibelli's services by blindly accepting Scibelli's rather questionable medical opinion concerning the extent of Davis's recovery and his ability to perform his job (A32-33).

However, aside from this, there is no evidence that Davis had trouble performing his job or that he complained about needing continued help.

2. The Normal Complement of Employees In the Shipping Department During the Six Month Period

The Board has ruled that the normal complement of employees in the shipping department is seven (A 33). This is, at best, an example of befuddled reasoning. At worst it is an example of a deliberate attempt to distort the record for the purpose of justifying an unsupportable position.

It is incontrovertible that,except for the short period following Davis' return from the hospital, the shipping department has not had seven employees since November, 1973. What it appears the Board has done is total all the employees in the shipping department over a period of a year and then divide by twelve. This is a mathematically faultless but factually worthless exercise. The following hypothetical situation should demonstrate the absurdity of the Board's conclusion:

On May 1, 1973 Company A had a two million dollar government contract. It thus needed 50 employees in its shipping department. On March 1, 1974 it lost the government contract and was forced to lay off 46 men. The average complement of employees in Company A's shipping

	Average Volume Per Month	Average No. of Orders Per Month
Dec. '73 - April '74	$ 53,908	1,179
May '74 (thru 5/28)	38,116	848

These figures clearly show a substantial business decline in the five month period from December, 1973 through April, 1974. During this period the number of employees in the shipping department was at all times six exept from the brief period immediately following Davis' return to work. May is clearly a disaster.

However, the May figure notwithstanding, the undisputed December through April figures certainly support not only the right but the economic necessity of returning the shipping department complement to six,where it had been since December, 1973.

The Board does not have the authority to compel an employer to employ an extra man it does not need merely because that man has taken part in a union organizing drive.

3. The Economic Condition Of The Employer At The Time Of The Layoff.

Respondent's Exhibit 5 demonstrates that the month of May was by far the slowest month the employer had in over ayear and would unquestionably support a substantial reduction in the work force. For example,

department for the period of May 1, 1973 to May 1, 1974 is 44 employees. Is this a relevant statistic? It is as relevant as the Board's finding concerning Respondent's shipping department.

What the Board did not do was compute the average dollar volume and number of orders in the shipping department during the above 12 month period and compare it with the May figures. Respondent's Exhibit 5 (A 171), which appears to have been reproduced in small print is a summary of shipping volume taken from the invoice books of the employer. It sets forth the dollar volume and the number of orders processed in the shipping department from April, 1973 through June, 1974. The accuracy of the summary is admitted by General Counsel. All of the books for the above months were made available to him at the employer's premises. He personally ran a tape for the month of May, and, at his request, three additional books picked by him were brought to the hearing and left with him overnight to be checked (A 352-354, 381).

The Court's attention is respectfully directed to the following averages:

	Average Volume Per Month	Average No. of Orders Per Month
April '73-April '74	$ 59,058	1,252
April '73-Nov. '73	62,276	1,291

in April, 1973 the shipping department did a volume of $74,628.61 and processed 1,954 orders with a complement of 7 employees. In May, 1974 up to May 28th, the date of the strike, the shipping department did a volume of $38,116.94 and processed 848 orders. Yet, according to the Board, the Company still needed seven employees. The absurdity of its position is abundantly apparent.

It is respectfully suggested that the employer's tale of economic woe should not be too hard to believe in light of the fact that many people felt that in the spring of 1974 the country was in a depression. If General Motors could lay off hundreds of thousands, cannot little American Map justify the layoff of a single temporary employee?

The Board tries to infer that the impending arrival of the Business Control Atlas' (BCA's) books, annually prepared and shipped by the employer, would warrant the retention of Scibelli. However, the record proves otherwise. The BCA's require no picking and are thus very easy to ship, requiring little time. They would not require the retention of an extra employee even if they all came at once, which they do not. Even if they did all come at once, the entire quantity could be shipped in three or four days. As a practical matter,

the first shipment did not arrive until two weeks after Scibelli's layoff (A 227-228, 355-356, 360, 380-381).

Furthermore, whether or not an extra man should be kept because of the anticipated arrival of an annual order is a business decision for the company to make, not the N.L.R.B.

4. The Testimony Of General Counsel's Own Witnesses

The Court's attention is also respectfully directed to the fact that the economic necessity of the layoff was admitted by Board's own witness, Michael Glavina. Glavina was the foreman of the shipping department at the time of Scibelli's layoff. He gave the following testimony:

Q I call your attention to May 17, 1974, the day of the interruption in the serive of Mr. Scibelli, and I ask you whether or not the work was slow in the shipping department at that time?

A Well, we were slow, but there was enough work to keep us going. It was slow, but it was enough work to keep us going.

Q Was there also work enough that six people could have handled it very easily, truthfully?

A You could always use the people someplace else.

Q Would you answer my question. Is it true that there was little enough work so that six people could easily handle it?

A I would say so, yes. (A 275)

In determining Glavina's credibility, in this matter, it is respectfully pointed out that he is a hostile witness who was discharged by the employer prior to this testimony.

Even Scibelli admits, albeit reluctantly, that there was a drop off in May. He testified:

Q There was some drop off, sir?

A I said there was a slightly less number of orders that went out. (A 221)

Employer contents that even a "slightly less number of orders" would justify Scibelli's layoff since he was an extra man in the shipping department as well as a mere temporary or casual employee.

5. Board Precedent.

The facts set forth below should be considered in the light of recent Board decisions.

Scibelli was a temporary or casual employee hired for the sole and express purpose of filling in for a hospitalized shipping department employee. He was laid off shortly after the return of that employee. The normal complement of employees in the shipping department is six and has been six since December, 1973, about six months prior to Scibelli's layoff. When Scibelli was laid off, the complement was once again six. Shipping department volume was down substantially for the six months preceding Scibelli's layoff. Volume for the month of May was the lowest it had been in over a year and was down 36% from the average volume for the past 13 months. Besides being the only temporary employee in the shipping department, he had the least seniority. Since a layoff was a clear economic necessity, if he had not been laid off, it would have required giving him preferential treatment. There was no evidence that he was replaced by another employee as indeed he was not. There was no evidence that the shipping department had to work one minute of overtime because of his absence. Although the company admittedly knew he was instrumental in the union drive, so were several other employees who were not laid off. Furthermore, there is no evidence or finding that the employer discovered Scibelli's activities by surveillance or interrogation.

Scibelli volunteered the information to Barbara LaFarr, a clerical employee (A 217, 280). He further made sure that Scali knew of his activities by giving Scali a piece of union literature (A 221-222), and by his defiance of Scali's request that he wanted to see Scibelli (A 242). Indeed, Scibelli's behavior appears deliberately provocative.

There is also no evidence that Scibelli was laid off because of his union activities. The Board has apparently looked into the employer's thought processes and concluded that since it knew of Scibelli's pro-union activities; that must have been the reason for his layoff. There is nothing in the record to support this conclusion. What the Board has in effect ruled is that the mere knowledge of an employee's union activities makes that employee layoff proof.

Board decisions have unanimously upheld the layoff of employees under the above facts. Metzger Machine & Engineering Co. 209 NLRB 905, Silver Eagle Co. 214 NLRB No. 26, White Pine, Inc. 213 NLRB No. 77, Oscar Enterprises, Inc. 214 NLRB No. 11, Mays J.W., Inc. 213 NLRB No. 42.

In Sharkey's Tire & Rubber Co., Inc., 222 NLRB No. 40, the Board upheld layoffs of pro-union employees

for economic reasons; while in United Engineers, Inc., 222 NLRB No. 9, the Board recognized the necessity for layoffs because of the national economic slump. See also Houston Shopping News Co., 223 NLRB No. 174.

II

CREDITING EVERY WORD OF TESTIMONY PRESENTED BY GENERAL COUNSEL, THE ADMINISTRATIVE JUDGE ERRED IN RECOMMENDING THE ISSUANCE OF A BARGAINING ORDER

Accepting every 8(a) (1) violation found by the Administrative Judge, he nevertheless erred in recommending the issuance of a bargaining order for the following reasons:

1. No proof was presented that the union's alleged majority was undermined. Indeed it would appear the alleged violations had no effect whatsoever.

2. No proof was presented that a fair election would be improbable.

3. The alleged unfair labor practices were of a minor nature and do not justify the extreme remedy of a bargaining order.

4. The alleged 8(a) (1) violation affected only six employees.

5. All but one of the violations found was not within the scope of the Regional Director's complaint.

1. The union's alleged majority was not undermined by the violations.

Recognizing the inherent unreliability in union authorization cards the U.S. Supreme Court in NLRB v. Gissel Packing Co., 395 U.S. 575 (1969) ruled that the extreme remedy of the bargaining order should only be used in cases where violations undermined the majority of the union and impeded the election process. Although the NLRB has been steadily eroding it, the Gissel doctrine is still the law of the land.

According to the Board the Steel-Fab case upon which it relies also requires proof that the union's majority was dissipated (A 47).[1]

In the instant case, the Board makes the bare finding that the union's majority was dissipated but cites no facts to support such a finding. The reason for this is apparent; the record contains no facts to support such a finding. Indeed the record supports the opposite conclusion.

The Board found violations that occurred at "the end of April or the beginning of May." (A 30) affecting Ambrose. However, Ambrose signed a union card on May 7th. Brown allegedly addressed the mounting department on May

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[1] Steel-Fab, Inc. 212 NLRB No. 25

3rd, however, at the May 7th meeting attended by supervisor Glavina, all the mounting department signed cards.

Violations were also found on May 15th and May 16th, yet the Board held that participation of 11 employees (including the entire mounting department and Ambrose) in the May 28, 1974 strike, is proof of the union's majority. (A 44)

Clearly by the Board's own findings, the union's majority was not affected by the alleged 8(a) (1) violations and thus a bargaining order cannot be issued.

2. A fair election could have and should have been held.

Under the rule of the Gissel case, supra, a bargaining order should issue only if "the Board finds that the possibility of erasing the effects of past practices and of insuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight" (p. 614). Linden Lumber Division, Summer & Co. 190 NLRB 718.

In the case at bar an election was never had. It was "postponed" at the eleventh hour, not because a fair election was improbable, but, in the words of the Board, "to permit consideration of the impact of the recent Board decision issued July 2, 1974..." (See

Exhibit D annexed).

At the time set for the election, July 29, 1974, four of the striking employees had already been reinstated (A 40, 122). The replacement's votes could have been challenged pending a determination of their status as employees.

It should also be noted that at that time the Board had not yet decided to issue a complaint. Such complaint was not issued until August 20, 1974.

While the Board pays lip service to Gissel by finding that a fair election could not have been held, it gives no reasons for its findings and, indeed, no proof in that point was presented. In NLRB v. Armco Industries, ___ F2d ___ (C.A. 3rd Cir. 1976) the Court of Appeals ruled that a mere finding was not sufficient.

3. The alleged 8(a) (1) violations are too minor to support a bargaining order.

The Gissel case also stands for the proposition that minor violations, which, "because of their minimal impact on the election machinery, will not sustain a bargaining order" (p. 615).

In the instant case there are two minor 8(a)(1) violations at best involving six employees. The first

involves two alleged identical statements by Leroy Brown, a lower echelon supervisor. Brown was supposed to have said that ten or fifteen years ago a union tried to organize the employer and the people who tried to bring the union lost their jobs. This statement was denied by Brown and his denial was supported by two employees in his department (A 412-413, 416). Furthermore, no evidence was presented that Brown was speaking for the employer or that these ancient events reflected the employer's current attitude. The Board has held that such testimony is vital. When considering Supervisor Glavina's admitted pro-union statements made at the May 7, 1974 union meeting at which nine cards were signed, the Board stressed that Glavina "never told the employees that he was acting for the Respondent when he made statements favorable to the union," (A43). Surely such proof is also vital when a supervisor with identical responsibilities makes statements found to be unfavorable to the union.

The alleged violations involving Ambrose, besides being outside the scope of the complaint, involve only one man, as will be shown below, are without record support.

The Court's attention is respectfully directed to the fact that there were no findings that the employer engaged in surveillance or interrogation or promised benefits or gave wage increases. All that the Board found were a couple of minor 8(a) (1) violations and the layoff of a single, temporary employee, who worked for the Company for three months and who was the last employee hired. Under the rule of Gissel, as well as Board precedent, such minor violations cannot support the extreme remedy of a bargaining order. House of Television, Inc. 213 NLRB No. 36, Linden Lumber Division, Summer & Co., supra; Congoleum Industries, Inc. 197 NLRB 534; Gold Circle Department Stores, 207 NLRB 1005; Consolidated Fibers & Freight Checkers, 197 NLRB 843; Independent Rapid Trucking, 200 NLRB 1972; Kal-Die Casting Corp., 221 NLRB 172.

4. The alleged 8(a) (1) violations involved only a small number of employees.

At best the alleged violations involve only six of the 17 employees in the unit. Furthermore, as stated above, the alleged violations had no effect on them as they all signed cards and all engaged in the recognition strike in support of the union. Kal-Die Casting Corp. supra.

5. The complaint was insufficient to include all but one of the 8(a) (1) violations found by the Board.

It is conceded that under the liberal Federal Rules, Courts will not restrict proof to the exact dates alleged in complaints. The Federal Rules also provide for extremely broad discovery so that surprise is virtually impossible. In NLRB cases, however, there is no discovery whatsoever for the employer. His knowledge of the Board's case is limited solely to what appears in the complaint. In the present case, most of the 8(a) (1) violations found by the Board took place before May 6th, the first date alleged in the complaint, and before the formation of the union. Proof of these violations should not have been accepted. If the Board wanted to present such proof, it would be a simple matter for it to amend its complaint and it should be required to do so.

Paragraph 10 of the complaint alleges that the employer committed certain 8(a) (1) violations on May 6, 8, 10, 15 and 16, 1974 (A 74). The Board found the following violations:

1. Brown's statement to the mounting department employees on May 3rd (A 30). The complaint was insufficient to include this alleged violation.

2. Scali's warning to Ambrose at the end of April or the beginning of May (A 30). As a matter of fact, Ambrose testified that the alleged conversation took place in the middle of April. However, the Board, without the hinderance of record testimony, fixed the date as "May 1 or earlier" (A 16-17). The complaint is insufficient to cover both versions.

3. Week's warning to Ambrose (a short time after the Scali incident [2] (A 307).

4. Brown's statement to Green on or about May 15, 1974 (A 30). Green, a temporary employee, admittedly was not a part of the unit found appropriate, (A 10-11,20). There was no testimony that she told others of her alleged conversation with Brown. Therefore his statement to her could not be an 8(a) (1) violation since it could have no cohersive effect on her or others concerning union activities. Legally the statement to her has the same effect as if it were made to a stranger.

---

2 The Board arbitrarily fixes the date for the alleged talks between Ambrose and Scali and Weeks on May 1, and not the middle of April as Ambrose testified because that was when the union campaign was on. (A 16-17) .However, Scibelli testified that the union talks began in the middle of April(A220). Thus Ambrose could have heard about the union at that time and the Board's rationale is erroneous.

The only 8(a) (1) violation within the framework of the complaint was the alleged May 16th repeat performance of Brown (A 31).

The first date alleged in the complaint is May 6, 1974. The date has a certain significance as it is the date that Local 923, RWDSU, AFL-CIO, the labor organization in this proceedir , came into existence (A 127, 263). Thus, the complaint does not encompass violations before that date auch such violations may not be considered.

It is clear that the complaint must provide sufficient notice of the acts sought to be proven, especially since no discovery is allowed in these proceedings. According to the Board's own rules and regulations, it must contain a clear and concise description of the acts. Majestic Weaving Co. 344 F 2d 116 (CA 2 1965); Glasgow Industries, Inc. 210 NLRB No. 22 Kingwood Mining Co. 210 NLRB No. 139

III

THE TEN UNION AUTHORIZATION CARDS EVIDENCING THE UNION'S ALLEGED MAJORITY ARE INVALID

The Board erred when it upheld the validity of the ten authorization cards that support the union's

claim of a majority in a unit of 17 employees (A 23). The employer submits that each and every one of these cards is invalid.

Nine of the ten cards were signed at a May 7, 1974 union meeting in which Michael Glavina, a supervisor, who was also an organizing leader, was present, spoke on behalf of the union and himself signed a card (A 209, 211, 226, 255, 266, 276). At this meeting, six employees from Glavina's department were present and signed cards (A 184). Thus these nine cares are clearly invalidated.

The law is settled that "supervisory pressure upon employees in the selection of a bargaining representative is coersive. Turner's Express, Inc. v. NLRB 456 F 2d 289, 291 (C.A. 4) citing NLRB v. Metropolitan Life Insurance Co., 405 F 2d 1169 (C.A. 2), and N.L.R.B. v. Roselon Southern, Inc. 382 F 2d 245 (C.A. 6); also directly in point are NLRB v. Boyer Bros., Inc. 448 F 2d 55 (C.A. 3, 1971), NLRB v. Hawthorne Aviation 406 F 2d 429 (C.A. 10, 1969) and Pully v. NLRB 395 F 2d 870 (C.A. 6, 1968).

As recognized by the Court in Turner's Express, Inc. v. NLRB, supra

> "[t]he Board designation of...'minor supervisors' is not supported by the evidence

> or the law. The Act does not grade supervisors as major or minor. An individual is either a supervisor or an employee...
>
> * * *
>
> "In industry an employee is more concerned about the attitude of his immediate supervisor than he is about the feelings of the company president. This is similar to the Army,where a private is more concerned with the attitude of his corporal or sergeant than he is with the colonel or general, since the corporal and sergeant control his day-to-day life."(id. at 293,294)

The Board tries to explain away Glavina's presence at the meeting with the suprising finding that it does not appear that the employees considered him as such (supervisor) at the time" (A 43). In dealing with a similar contention, the Court of Appeals in Pully v. NLRB, supra, held:

> "Whether an employee is a supervisor or not is a question of fact, and the Board's resolution of that issue is conclusive if supported by substantial evidence." (p. 875)

In the case at bar, Glavina was specifically found to be a supervisor by the Board (A 107-108). Such ruling is conclusive.

In NLRB v. Boyer Bros., Inc., supra, the Third Circuit deals with the rational for excluding cards

solicited by supervisors. The Court stated at page 563:

> "The rational for excluding cards solicited by supervisors is that the authority they hold over employees provides a basis for potential tyranny when improperly exercised by a supervisor thwarted in his aim to obtain union recognition"

In discussing the effect of the dismissal of the supervisor in the Boyer Bros. case, the court ruled that "if before her discharge she possessed power over employees and solicited signatures during this period, her subsequent ouster by the company is irrelevant."

In a further effort to de-supervise Glavina , the Board points out that the union took the position that he was not a supervisor at the representation proceeding. That position was resoundingly rejected by the Regional Director and should have been rejected by the Board. The Board argues against its own position when it attempts to discredit the testimony of Radames Martinez because at the representation proceeding, Martinez testified "with patent incredibility, that no one gave orders in the shipping department" (A 30). The Board's statement that the employees at the union meeting did not consider Glavina to be a supervisor should also be accepted "with patent incredibility."

Furthermore, if the cards were invalid or tainted when signed, the representation petition of May 8, 1974, which was based on these cards, must be dismissed.

IV

THE RECORD CONTAINS NO SUPPORT FOR THE ALLEGED VIOLATIONS CONCERNING AMBROSE

Nicholas Ambrose is a mentally retarded employee who was shamelessly used by the employee leaders of the union organizing drive to achieve their ends. Ambrose, on his direct examination concerning the alleged conversations with Scali and Weeks, did not testify that he was in any way threatened (A 285-288) until the General Counsel "refreshed his recollection" with his affidavit given in the laboratory conditions that prevail at union headquarters (A 320) where he was surrounded by his organizing "friends". For example, when asked about his conversation with Scali, Ambrose testified that "He told me they were having a drive on for the union. That's all " (A 285) emphasis added. On such testimony would the Board issue a bargaining order. The Board has, in effect, discredited his testimony at the hearing while crediting his affidavit made under the eyes of the organizers.

There is no record evidence whatsoever concerning Weeks' alleged statement to Ambrose that he could lose

his job if he got involved with pro-union employees. Ambrose never so testified (A 287-288), and certainly Weeks denied having said it (A 388-389). On what, then, does the Board base its finding?

In evaluating Ambrose's testimony and the tactics of the union, we must consider the letter that Ambrose wrote concerning Weeks, a copy of which is annexed as Exhibit A. Ambrose is a somewhat retarded man who was the subject of teasing by his fellow employees. Robert Floyd Weeks, who had befriended Ambrose, was Vice President in charge of sales and marketing (A 388). It was Ambrose' habit to drop into Week's office for a chat (A 305).

Yet at the hearing the General Counsel proudly presented the union's bombshell, a pathetic letter in Ambrose' handwriting in which he claims Weeks offered him $10.00 not to join the union. Ambrose, on cross-examination, admitted that the letter was untrue (A 300). He further stated that writing the letter was not his idea (A 301) and that he was told to write it for a union man (A 297). However, when asked who told him to write the letter, Ambrose said he didn't know (A 298-302), an obvious lie.

The Board found no unfair labor practice because Ambrose said Weeks was joking when he made the offer. (A 17) However, the Board ignores the fact that Ambrose admitted the letter was "untrue" and found it "unnecessary to resolve this credibility question."

It is respectfully submitted that the Board entirely misses the point. The issue here is not the credibility of the contents of the letter - that has already been admitted - but rather, the credibility of people who would resort to that kind of tactic. They forced a retarded man to write an untruthful and incriminating letter about his only friend in the company.

Who did this? The letter was given to Scibelli (A 312) who tried to use it to help his organizing campaign. The affidavit concerning the letter was written at union headquarters in the presence of Tommy Smith, Michael Glavina and Michael Scibelli (A 320), all union witnesses whose every word is credited. And, of course, the testimony of Ambrose, the admitted poison pen writer, is credited too.

V

THE STRIKE CALLED BY THE UNION WAS FOR RECOGNITION AND NOT FOR THE PURPOSE OF PROTESTING A LAYOFF OR TERMINATION AND THUS CANNOT BE CONSIDERED AN UNFAIR LABOR PRACTICE STRIKE

If the strike that began on May 28, 1974 was for

the purpose of protesting the layoff of Scibelli and the discharge of Glavina, a supervisor, why was no attempt made to inform either the public or the employer of this protest?

The answer is obvious. The strike was for the sole purpose of forcing the company to recognize the union. This was the purpose that was communicated to the public (A 156). This was the purpose that was communicated to the employer (A 338-339). The unfair labor practice aspect was a mere afterthought when the strike had failed.

In considering this aspect of the case, it is respectfully suggested that the court ask itself the following question: Could the company have ended the strike by recognizing the union? If the answer is not already obvious, the following facts will make it so.

1. The picket signs advertised the fact that American Map was "Non Union" and "Refuses to bargain". No mention was made of unfair labor practices or demands for reinstatement.

2. These signs were shown at the May 24, 1974 strike meeting and were accepted (A 225).

3. The demand that workers be reinstated was never communicated to the company either by an employee

or by a representative of the union (A 227).

4. Sidney Grund, the chief union organizer, approached Lewis Andrews, the Company President, during the strike and offered a "very, very sweet deal" if the Company would recognize the union. He never mentioned the reinstatement of employees as a condition to ending the strike (A 338-339).

The above facts are uncontroverted by record testimony. It was contended that Grund was hospitalized and could not testify. I am sure this is true, but the fact is he did not testify.

However, the failure of Grund to testify not withstanding, the circumstances clearly support the above facts. Grund had the opportunity for his conversation with Andrews when he visited the company's premises to pick up the striking employees' last paychecks (A 421). He was seen by Joseph Scali talking alone to Andrews (A 425-426). Furthermore, the contents of Grund's conversation with Andrews is completely consistent with and substantiated by the message that appeared on the picket signs - recognize the union!

There is only one reason for striking - to force an employer to yield to a union demand through economic

pressure. If the purpose of the strike was to compel reinstatement of employees, how could the union hope to achieve its purpose when it was kept a secret?

The answer is clear. The purpose of the strike was the only one stated - recognition. If another purpose secretly existed in the minds of the strikers and the organizers, there is no way of knowing; and certainly no legal obligations can stem from such secret purpose.

An employer has many obligations and burdens under labor laws - mind reading is not one of them. A union's purpose can only be judged by what they say, not what they think.

VI

THE UNION IS ESTOPPED BY ITS ACTIONS FROM CLAIMING THE STRIKE IS AN UNFAIR LABOR PRACTICE STRIKE

A strike following an unfair labor practice does not necessarily have to be an unfair labor practice strike. It will only be an unfair labor practice strike if its purpose is to protest the unfair labor practice. Typo service Corp. 203 NLRB 1180.

Assuming arguendo the employer committed an unfair labor practice in laying off Scibelli, a subsequent strike would only be an unfair labor practice strike if its purpose was to protest that layoff. Thus, a strike

for that purpose would impose certain legal obligations on the employer and failure to meet those obligations would create back pay liability. However, a strike for the purpose of forcing recognition, even after a hypothetical illegal layoff, would be an economic strike with no back pay liability.

An employer faced with a strike protesting a single layoff might choose to recall that employee rather than risk substantial back pay liability - if he knew that was the reason for the strike.

If the strike was for a dual purpose, for recognition and to protest an illegal layoff, the employer might wish to recall the employee without recognizing the union - if he knew of the dual purpose of the strike.

But can a union tell an employer a strike is for recognition and then later claim the strike was really to protest an unfair labor practice because this was really the union's secret purpose?

It is the understanding of this writer that unions are covered by the rule of law. It is axiomatic under the law that a party cannot benefit from his own misleading actions. If he leads a party to believe that a certain set of facts exists, he will be estopped from alleging that, in fact, another set of facts exist.

The Board has ruled that the employer should have known from the circumstances the nature of the strike. However as the record shows, all the "circumstances" communicated to the employer spelled recognition. It is the employer's position that if a union strikes to protest a discharge or a layoff, it is the easiest thing in the world for them to make this fact plainly known - and they should be required to do so.

VII

EMPLOYER'S REFUSAL TO REINSTATE THE STRIKERS WAS PROPER SINCE THEY HAD BEEN REPLACED. ITS REFUSAL TO REPLACE AMBROSE WAS ALSO PROPER AS HE WAS CLEARLY A MARGINAL EMPLOYEE WHOSE SOLE FUNCTION WAS BEING PERFORMED BY REPLACEMENTS AT THE TIME HE SOUGHT REINSTATEMENT

Unquestionably an employer need not replace economic strikers who have been replaced by permanent employees. Food Service Co., 202 NLRB 290, Scalera Bus Service 210 NLRB 63, Bushnell's Kitchens 222 NLRB No. 4.

While the Board does not quarrel with the fact that all of the strikers jobs were filled as of June 4, 1974, it has held that Ambrose should have been reinstated on May 31st. If the strike is an unfair labor practice strike, then Ambrose should have been reinstated. But since it is not an unfair labor practice strike the em-

ployer was correct in not rehiring him. At the time of his request for reinstatement, as was found by the Board, his job was being performed by replacements (A 27).

However, the Board also found that Ambrose was denied reinstatement because of his participation in the strike. This finding is both inconsistent and erroneous.

As stated above and as is obvious from his testimony and the testimony of his fellow employees, Nicholas Ambrose is mentally handicapped. Although he has been employed by the company for some time, his functions for the company were extremely limited and he habitually spent half of his time wandering around talking to other employees. He was, bluntly, a man for whom people felt sorry and for whom the Andrews family felt responsible (A 292-303, 308-311, 314-315, 374-375, 379, 392, 395, 396, 401-406).

Ambrose' sole function for the company consisted of writing up United Parcel shipments and making an occasional trip to the post office (A 361-364, 395,402). He could perform no other work, and his performance of even these simple tasks, was marginal (A 395-396, 401-403).

When Ambrose asked to return to work on May 31, 1974, he was not rehired because he was not needed. His simple tasks were being performed by replacements (A 27, 364-366, 404-405). This is a business judgment the em-

ployer was entitled to make providing the decision was not based on the employee's union activities.

In the present case, it was never even suggested that the employer believed Ambrose was one of the employee organizing leaders. In fact, the record shows the reverse is true. Ambrose' name was never mentioned as one of the organizing leaders and he was not one of the employees who gave testimony for the union at the representation hearing (A 16, 95-99).

Ambrose engaged in picketing but, according to the Board, so did ten other employees including Clyde Warren who was reinstated on May 31st, the day Ambrose asked to be reinstated. As of the date of the hearing, seven of the eleven picketers have been reinstated, including three employees who gave testimony for the union. Ambrose was reinstated on August 22, 1974 (A 187).

It is further respectfully submitted that because of Ambrose' marginal performance, the employer would, even without the above facts, be under no obligation to rehire him. Colour IV Corp. 202 NLRB 44.

VIII

THE UNION NEVER DEMANDED RECOGNITION IN AN APPROPRIATE UNIT. THE REGIONAL DIRECTOR'S COMPLAINT IS ERRONEOUS AND INSUFFICIENT ON THIS POINT

The Regional Director alleged in paragraph 8 of its complaint that the union, on May 9, 1974, requested recognition in the appropriate unit set forth in paragraph 6 of that complaint. This is an erroneous pleading and the complaint is thus insufficient to support a bargaining order.

The unit set forth by the Regional Director in paragraph 6 includes drafting employees. The union sought recognition in a unit in which such employees were excluded.

In fact, on May 8, 1974, the union filed a petition in which it described the unit sought as "all shipping employees, receiving, packers, map mounting employees, plant clericals..." Drafting department employees were specifically excluded (A 93).

The employer contended that the unit sought by the union was improper. The contention of the employer was subsequently upheld by the Regional Director who ruled that a proper unit must include drafting department employees. As a result of the Regional Director's decision, an additional six employees were added to the 11 employee unit sought by the union.

Clearly, then, on May 9, 1974, the union did not request recognition in the unit described in paragraph 6.

The union's demand of that date was for a different, improper unit.

No further allegations on the question of demand and refusal appear in the complaint. Furthermore, no proof to substantiate any further allegations was presented at the hearing. But even if such proof was presented, General Counsel's motion to conform the pleadings to the proof was denied by the Board (A 431-432).

Thus, a bargaining order must fail, since the complaint does not properly allege any time in which a majority existed in a unit held appropriate for bargaining. As previously stated, the complaint must contain a clear and concise description of the acts. Majestic Weaving Co. (C.A. 2 1965), supra.

Until Steel-Fab, Inc., 212 NLRB No. 25, a bargaining order could not issue since there could be no finding that the employer ever refused to bargain in an appropriate unit. However,under the Steel-Fab doctrine it is no longer necessary to allege and prove an 8(a)(1) violation. Thus bargaining may be ordered where there was no refusal to bargain.

It is respectfully submitted that the Steel-Fab case is but another step.by the Board to cut into the restraints put on it by the Gissel case, supra. It is

respectfully requested that the decision of the Board in the Steel-Fab case not be followed by this Court.

IX

THE ADMINISTRATIVE JUDGE USED A DOUBLE STANDARD IN CREDITING EACH UNION WITNESS WHILE DISCREDITING EACH EMPLOYER WITNESS

It is respectfully submitted that the credibility findings of the Administrative Judge as adopted by the Board should be carefully reviewed by the Court. Even a casual examination of these findings and his reasons therefore, must cause one to question his judicial objectivity.

It is further respectfully submitted that the Administrative Judge used a double standard in ignoring or explaining away inconsistent statements and outright misrepresentations in crediting union witnesses while straining to discredit employer witnesses on the grounds that they appeared to him to be "glib" or "insincere". The Board, while will not review credibility, rubber-stamped the Administrative Judge's findings.

Following is a summary of such testimony:

Ambrose: This witness wrote a letter claiming that Weeks offered him $10.00 not to join the union and to stay away from certain people who were supposed to be sympathetic to the union. (Exhibit A annexed) He said

that he "was told to write it for a union man," but admitted that the letter was not true. Ambrose also testified while writing the letter was not his idea, he did know who told him to write the letter, its purpose, what was done with it or why he wrote it. These obvious falsehoods as well as the libelous letter itself, were ignored by the Administrative Judge who also found that Weeks told Ambrose that he could lose his job if he got involved with employees who were starting a union. No matter whose testimony is credited, there is not <u>one word</u> of testimony from Ambrose that Weeks ever said his job could be lost(A 287-288).

It should also be noted that in his direct testimony concerning Scali, Ambrose did not testify about Scali's alleged threat until the General Counsel gave Ambrose his affidavit to "refresh his recollection." Such testimony was wrongfully allowed over objections and, even more wrongfully, was credited. (A 286-287).

<u>Scibelli</u>: This witness was the recipient of Ambrose' admittedly untrue poison pen letter. Although there were five employees in Supervisor Brown's mounting department, it was necessary to get Scibelli, an employee from another department to testify he "overheard" Brown's alleged statement of May 3rd (A 214). Scibelli was credited even though Martinez and Josephn, two mounting depart-

ment employees stated they had not heard the statement. Scibelli was also untruthful concerning the slowness in the shipping department. (A 217-218,220-221) He made inconsistent statements concerning who was present in the May 7th union meeting (A 209-211); made inconsistent statements concerning Glavina's statements at the May 7th union meeting (A 223-224); gave testimony concerning company procedure in processing BCL shipments although he finally admitted he had never been present when the BCL's came in (A 227-229). He was also obviously untruthful in his testimony concerning Glavina's supervisory status (A 234-235). Nevertheless, the Administrative Judge credited his every word and stated he "appeared to be sincere in his manner" (A 14).

Glavina: Glavina was a union witness who had been foreman of the shipping department. He testified against interest that work in that department in May was slow enough that six employees "could easily handle it"(A 275). This testimony was ignored by the Administrative Judge.

Smith: After hearing Scibelli's testimony, Smith stated that he also had heard Brown's alleged remarks to the mounting department on May 3rd. Yet in two affidavits given to a Board agent in June and July, he did not mention the alleged May 3rd incident. (A 157-

169,260). Despite this obvious inconsistency and the conflicting testimony of Martinez and Joseph, Smith's testimony was credited.

Green: In trying to establish Barbara LaFarr, an office worker, as a supervisor, Green testified that she was hired by LaFarr in April, 1974 (A 235-236). She also testified at great length to a conversation she had with LaFarr on May 10, Friday of the week before she was laid off (A 238,241). However, uncontradicted record evidence and testimony later established that 1) Green had, in fact, been hired first in 1973 and had herself contacted Scali for part-time employment in 1974 (A 323-324,,Exhibit B annexed); 2) Green had not been at work on Friday, May 10, the day of her alleged conversation with LaFarr (A 325,366, Exhibit C annexed).

The Administrative Judge tries to explain away these misrepresentations by saying that Green had trouble remembering dates (A 20-21). However, the key to Green's testimony is that she specifically mentioned "Friday", not a specific date. Furthermore, you don't say your goodbyes, as she testified, on any day but Friday.

Despite these glaring inconsistencies the Administrative Judge credits Green's testimony concerning Brown over his vigorous denials (A 408).

Following are some of the reasons for discrediting

employer witnesses:

Weeks - glib (A 17)

Scali - speculated and drew inferences (A16)

Brown - not convincing or sincere; knew the subway the employees took home (A21-22)

Andrews - made accurate estimates after being forced to speculate on cross-examination (A 27)

Toney Joseph - (who said he didn't remember hearing Brown make his alleged May 16th speech).

The Administrative Judge reasoned that Joseph did not contradct Smith's version (A 22). All he said was that he was there and didn't hear Brown say what Smith said he said. How else can one testify to a non-speech?

To the Administrative Judge, all the union witnesses were sincere and self-confident. Thus he forgave or ignored their misrepresentations and inconsistencies as well as their unforgivable use of Ambrose and his pathetic letter.

In contrast, in the eyes of the Administrative Judge, all the employer's witnesses were glib, insincere and shifty-eyed. He therefore discredited each and every one not withstanding the consistency of their testimony and in many cases uncontradicted record evidence.

A study of 13 unreported decisions of the judge

preceding the instant case involving like union vs. employer situations reveals a similar single-mindedness.

It is respectfully submitted that there is little or no credible record evidence to support any of the violations found by the Board.

CONCLUSION

It is respectfully submitted that for reasons set forth herein and upon a dispassionate and objective view of the testimony, the documentary evidence, and Board and Court prcedent, the Court should deny enforcement of the Board's order in its entirety.

Respectfully submitted,

FLOYD S. WEIL
Attorney for Respondent
Office & P. O. Address
60 East 42nd Street
New York, N. Y. 10017
(212) 867-4616

May 21 1974

I Was offered $10.00 not
to leave the Union and
to stay away from
Tommy Smith and the other
who were for the Union.
The offer came from Fat-
heads.

Sincerely yours.

Nicholas A. Ambrose

EXHIBIT "A"

APPLICATION FOR EMPLOYMENT

PERSONAL INFORMATION

DATE September 24, 1973 SOCIAL SECURITY NUMBER 054-46-8460

NAME Sims (LAST) Stephanie (FIRST) W. (MIDDLE) AGE 17 SEX Female

PRESENT ADDRESS 24 Monument Walk (STREET) Brooklyn (CITY) New York (STATE)

PERMANENT ADDRESS Same (STREET) (CITY) (STATE)

PHONE NO. 237-0755 OWN HOME No RENT $155 BOARD

DATE OF BIRTH* 7/5/56 HEIGHT 5'4" WEIGHT 126 COLOR OF HAIR Brown COLOR OF EYES Brown

MARRIED SINGLE ✓ WIDOWED DIVORCED SEPARATED

NUMBER OF CHILDREN None DEPENDENTS OTHER THAN WIFE OR CHILDREN *CITIZEN OF U. S. A. YES ☑ NO ○

IF RELATED TO ANYONE IN OUR EMPLOY, STATE NAME AND DEPARTMENT REFERRED BY Diane Bryant

EMPLOYMENT DESIRED

POSITION DATE YOU CAN START SALARY DESIRED 2.00 hr

ARE YOU EMPLOYED NOW? IF SO MAY WE INQUIRE OF YOUR PRESENT EMPLOYER

EVER APPLIED TO THIS COMPANY BEFORE? WHERE WHEN

EDUCATION	NAME AND LOCATION OF SCHOOL	YEARS ATTENDED	DATE GRADUATED	SUBJECTS STUDI
GRAMMAR SCHOOL	J.H.S. 232 155 Winthrop Street	2	6/70	
HIGH SCHOOL	Central Commercial	3		
COLLEGE				
TRADE, BUSINESS OR CORRESPONDENCE SCHOOL				

SUBJECTS OF SPECIAL STUDY OR RESEARCH WORK

*WHAT FOREIGN LANGUAGES DO YOU SPEAK FLUENTLY? None READ WRITE

U. S. MILITARY OR NAVAL SERVICE RANK PRESENT MEMBERSHIP IN NATIONAL GUARD OR RESERVES

ACTIVITIES OTHER THAN RELIGIOUS (CIVIC, ATHLETIC, FRATERNAL, ETC.)

EXCLUDE ORGANIZATIONS, THE NAME OR CHARACTER OF WHICH INDICATES THE RACE, CREED, COLOR OR NATIONAL ORIGIN OF ITS MEMBERS.

*THIS QUESTION MAY NOT BE ASKED IN STATES PROHIBITING SAME. MADE IN U.S.A.

(CONTINUED ON OTHER SIDE)

EXHIBIT "B"

No. 19

PAY EN 5-10-74

NAME Stephanie Sims

REG. TIME HRS. _____ RATE _____ AMT. _____

OVERTIME HRS. _____ " _____ " _____

W.T. _____ CITY T. _____ TOTAL EARNINGS _____

F.I.C.A. _____ BONDS _____

INS. _____ OTHER _____

HOSP. 3 1/2 hrs

STATE T 3 1/2

TOTAL DEDUCTIONS _____

AMOUNT DUE

	1st DAY	2nd DAY	3rd DAY	4th DAY	5th DAY	6th DAY	7th DAY
	5 00	5 00	5 00	5 00			
	1 40	1 37	1 40	1 36			
	3 1/4	3 1/2	3 1/4	3 1/2			
Daily Totals							

Balance due shown above is correct and receipt is acknowledged.

Signature

8001 CINCINNATI TIME RECORDER 907 BWAY NYC GR7-6980

EXHIBIT "C"

NATIONAL LABOR RELATIONS BOARD
REGION 2
Federal Building, Room 3614, 26 Federal Plaza
New York, New York 10007
Telephone 264-0300

July 26, 1974

Floyd Weil, Esq.
6 East 45th Street
New York, New York 10017

Local 923, RWDSU
Attention: Mr. Sidney Grund
130 West 42nd Street
New York, New York 10036

Re: American Map Co., Inc.
Case No. 2-RC-16513

Gentlemen:

This is to confirm telephonic notice to the parties in the above-entitled case, that the election scheduled to be held on July 29, 1974, has been postponed to permit consideration of the impact of the recent Board decision issued on July 2, 1974 in *Steel-Fab. Inc., 212 NLRB No. 25*, on the pending unfair labor practice charge in Case No. 2-CA-13319.

Very truly yours,

Winifred D. Morio
Acting Regional Director

cc:

Leon Reich, Esq.
253 Broadway
New York, New York 10007

EXHIBIT "D"

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JULIO VALLEJO, JR, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 2743 PITKIN AVE BROOKLYN N.Y.

That on the 29 day of JULY, 1976, deponent personally served the within RESPONDENTS' BRIEF upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

~~By leaving true copies of same with a duly authorized person at their designated office.~~

By depositing 2 true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York.

Names af attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

ALLISON W. BROWN, JR., ESQ.
NATIONAL LABOR RELATIONS BOARD
1717 PENNSYLVANIA, AVE.
WASHINGTON, D.C. 20570
ATTORNEY FOR PETITIONER

Julio Vallejo, Jr

Sworn to before me this
29th day of July, 1976

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1978

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